(3)
Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

RODNEY LEROY CRAIG,

Petitioner,

—v.—

TAMIKA HOLSEY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), and *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996), this Court held that although States possess broad discretion with respect to punitive damages, grossly excessive punitive damages awards violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they further no legitimate purpose and constitute an arbitrary deprivation of property. The question presented is:

Whether a punitive damages award is unconstitutionally excessive under *State Farm* and *Gore*, when:

a. the award is over 22 times the plaintiff's compensatory damages;

b. the court below analyzed the constitutionality of the award by comparing it to hypothetical compensatory damages, rather than the plaintiff's actual compensatory damages;

c. the court below based its analysis on a Supreme Court of Georgia case that was decided prior to *Gore* and rejects "the notion that punitive damages must necessarily bear some relationship to the actual damages awarded by the jury;" and

d. the court below relied on dissimilar conduct on the part of the tortfeasor to justify the award.

PARTIES TO THE PROCEEDING

Rodney Leroy Craig and Tamika Holsey.

RULE 29.6 STATEMENT

No corporation is a party to this action. Petitioner Craig is insured by Infinity Insurance Company.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Rodney Leroy Craig respectfully petitions this Court for a writ of certiorari to review the judgment of the Court of Appeals of Georgia in this case.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals of Georgia (App., infra, 2a) is reported at 590 S.E.2d 742. The order of the Supreme Court of Georgia denying certiorari (App., infra, 1a) is not reported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The Supreme Court of Georgia denied discretionary review in this case on March 29, 2004.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend. XIV, § 1.

STATEMENT OF THE CASE

On August 9, 1998, at approximately 1:44 a.m., Rodney Leroy Craig was involved in an automobile accident with Tamika Holsey. Craig was driving under the influence at the time of the accident and he was cited for, and pled guilty to charges of following too closely (Ga. Code Ann. § 40-6-49), leaving the scene of an accident involving injury (Ga. Code Ann. § 40-6-270(a)), and driving

under the influence, first offense (Ga. Code Ann. § 40-6-391(a)). As a result of the accident, Holsey suffered minor neck and back injuries that substantially resolved prior to trial.

On June 1, 2000, Holsey filed a Complaint against Craig for her personal injuries arising from the accident. The case then proceeded to trial on March 12th and 13th, 2002. Because punitive damages were sought, the trial was bifurcated as mandated under Georgia law. Prior to the commencement of trial, Craig objected through a Motion in Limine to the introduction of any evidence or comment on his criminal record beyond the use of a certified copy of his conviction for impeachment purposes.[1] Craig also moved in limine to preclude any evidence of his drug or alcohol use on occasions other than the night of the accident.

Nevertheless, Holsey mounted an attack on Craig at trial for conduct unrelated to the accident; including his prior conviction for drug possession and his use of marijuana prior to and following the day of the accident. During the first portion of the bifurcated trial, the trial court permitted Holsey's attorney to question Craig and to read from his deposition regarding his prior and subsequent drug and alcohol use over the continuing objections of his attorney. As a result, evidence that Craig was an occasional marijuana user and that he used marijuana subsequent to the day of the accident was admitted over the objections of his attorney.

During the punitive damages phase of the trial, the trial court again allowed Holsey's attorney, over objec-

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[1] Georgia law provides that a witness may be impeached by introducing a certified copy of a conviction of a crime involving moral turpitude, but the facts surrounding the conviction are not admissible unless the witness attempts to rehabilitate their character by explaining the circumstances of the conviction. *Willet v. Stookey, P.C.*, 568 S.E.2d 520 (Ga. Ct. App. 2002).

tion, to read into evidence even more of Craig's deposition testimony regarding drug use on occasions other than the night of the accident. The trial court further allowed Holsey's attorney to question Craig regarding marijuana use subsequent to the accident.

The trial court also permitted Holsey's attorney to question Craig and read portions of his deposition transcript pertaining to the details of his prior felony conviction for possession of a controlled substance in Arkansas. Craig's arrest for possession of a controlled substance occurred on October 20, 1996, nearly two years prior to Craig's accident with Holsey. Specifically, Holsey's attorney read from Craig's deposition transcript regarding the details of his prior felony conviction and the fact that the controlled substance was crack cocaine. Holsey's attorney was also permitted, over objection, to question Craig regarding the details of this conviction and his intent to use crack cocaine.

This culminated in Holsey's attorney being allowed to argue to the jury that they should award punitive damages based upon all of Craig's conduct, much of which was unrelated to the accident with Holsey and had occurred years before the accident. In addition to recounting all of this prejudicial evidence to the jury, Holsey's attorney argued the following to the jury: "And I can't tell you, and don't profess to tell you how much punitive damages you should award in this case. But I tell you that its unlimited, the amount."

Following the introduction of this inadmissable and prejudicial evidence and Holsey's attorney's argument, the jury returned a verdict and judgment against Craig in the amount of only $8,801.40 in actual and compensatory damages. The award of a small amount of actual and compensatory damages is conclusive proof of the very limited scope of Holsey's loss.

In stark contrast to these damages, the jury awarded Holsey $200,000.00 in punitive damages. Therefore, the punitive damages award was 22.7 times greater than the compensatory award. Craig moved the trial court for a new trial, but the motion was denied.

Craig then appealed to the Georgia Court of Appeals. Between the trial and the decision by the Court of Appeals, this Court decided *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003). One of Craig's arguments on appeal was that the punitive damages award was so grossly excessive that it violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution. However, the Georgia Court of Appeals affirmed and upheld the $200,000.00 punitive damages award.

In so doing, the court below rejected Craig's claim that the evidence introduced at trial had unduly prejudiced him and resulted in a punitive award that punished him for conduct that was unrelated to the traffic accident with Holsey. The court below further rejected Craig's claim that the punitive damages award was grossly excessive and thus, unconstitutional under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In a full bench decision with one dissent, the Court of Appeals justified the 22.7-to-1 ratio of punitive to compensatory damages by hypothesizing that Holsey could have died as a result of the accident. The court below then compared the punitive damages award to hypothetical wrongful death compensatory damages awards even though Holsey was not only alive and had recovered, but had suffered less than $9,000.00 in actual and compensatory damages. The Court of Appeals reasoned that "[i]n Georgia, awards for wrongful death can easily approach or exceed the amount of punitive damages

awarded in the present case." *Craig v. Holsey*, 590 S.E.2d 742, 748 (Ga. Ct. App. 2003); App., infra, 10a. Indeed, the Court of Appeals never discussed *State Farm's* recognition that "few awards exceeding a single digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *State Farm*, 538 U.S. at 425.

In support of its comparison of hypothetical compensatory damages to the actual punitive damages award, the court below cited to a single Georgia Supreme Court case, *Hospital Auth. of Gwinnett County v. Jones*, 409 S.E.2d 501 (Ga. 1991), which was decided prior to *Gore* and explicitly "rejected the notion that punitive damages must bear some relationship to the *actual* damages awarded by the jury." *Id.* at 503. Thus, the court below never compared the punitive damages award to the actual compensatory damages.

Furthermore, the court below conceded that Georgia law provides for only modest penalties for Craig's specific crimes, which penalties were dwarfed by the $200,000.00 punitive damages award. The court below, ignored this important factor by stating that the third *Gore* guidepost is "less important than the first two." [2] *Craig*, 590 S.E.2d at 748; App., infra, 11a.

Despite the fact that it never applied the second *Gore* guidepost and that the third guidepost was not satisfied, the court below concluded that the punitive damages award was not grossly excessive so as to be unconstitu-

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[2] Georgia law provides that the criminal penalty for a first offense of leaving the scene of an accident involving injury is a fine that cannot exceed $1,000. Ga. Code Ann. § 40-6-270(a). The monetary criminal penalty for a first offense of driving under the influence is a fine that cannot exceed $1,000. Ga. Code Ann. § 40-6-391(C)(1)(a).

tional under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Id.*

Presiding Judge Andrews dissented, stating that:

> the majority seeks to negate the disparity between the two awards by leaping to the conclusion that Holsey could have died in this accident and cites to compensatory damages in wrongful death cases as analogous to the potential damages in this case . . . this analogy is not helpful and the majority cites to no authority on point which would support this assumption.

Craig, 590 S.E.2d at 749; App., infra, 13a (Andrews, P.J., concurring in part and dissenting in part). Therefore, Presiding Judge Andrews concluded that "[i]n this case, of the three guideposts set out by *Gore*, the last two are not met, and only two of the five factors to be considered are present in the first one. Accordingly, the punitive damages awarded in this case were excessive and the judgment should be reversed." *Craig*, 590 S.E.2d at 749-750; App., infra, 14a.

REASONS FOR GRANTING THE PETITION

This Court should grant plenary review because the reasoning of the Court of Appeals in affirming the punitive damages award is in direct conflict with this Court's decisions in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003) and *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996). Furthermore, the erroneous decision of the Georgia Court of Appeals highlights a split between those courts that have properly applied *State Farm* and *Gore* and those that have not.

Here, the court below affirmed the punitive damages award even though only two of the five factors to be considered under the first *Gore* guidepost were satisfied, the second *Gore* guidepost was never applied, and the third guidepost was not met. In affirming the punitive damages award, the court below relied on a Georgia Supreme Court case that was decided prior to *Gore* and explicitly rejected the notion that punitive damages must bear some relationship to the actual compensatory damages. Accordingly, the punitive damages award in this case was grossly excessive and cannot withstand constitutional scrutiny. In the alternative, and at a minimum, this case must be vacated and remanded so that the punitive damages award can be compared to the actual compensatory damages awarded per *Gore* and *State Farm*.

THE GEORGIA COURT OF APPEALS' RULING UPHOLDING THE PUNITIVE DAMAGES AWARD DIRECTLY CONFLICTS WITH THIS COURT'S DECISIONS IN *GORE* AND *STATE FARM*

A. The Punitive Damages Award Is Presumptively Unconstitutional Because Of The 22.7-to-1 Ratio Of Punitive To Compensatory Damages

This Court's decision in *State Farm* makes clear that the 22.7-to-1 ratio of punitive to compensatory damages in this case is unconstitutionally excessive. Although this Court has been "reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award," this Court's "jurisprudence and the principles it has now established demonstrate . . . that, in practice, few awards exceeding a single digit ratio between punitive

and compensatory damages, to a significant degree, will satisfy due process." *State Farm*, 538 U.S. at 424-425. In fact, this Court has on multiple occasions stressed that "an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." *Id.* at 425; *Gore*, 517 U.S. at 581; *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23-24, 111 S.Ct. 1032 (1991).

This conclusion was based, in part, on over 700 years of legislative history providing for double, treble, or quadruple damages to punish and deter. *State Farm*, 538 U.S. at 425 (citing to *Gore*, 517 U.S. at 581 and n.33). Accordingly, this Court has held that "Single-digit multipliers are more likely to comport with due process, while still achieving the State's goal of deterrence and retribution." *State Farm*, 538 U.S. at 425.

The ratio in this case does not come close to the single-digit ratios that have traditionally satisfied due process. Instead, the plaintiff was awarded punitive damages that were over twenty-two times the amount of compensatory damages. Thus, the court below did not ensure that the measure of punishment was both reasonable and proportionate to the amount of harm to the plaintiff as is required by *State Farm*. *Id.* Indeed, as is discussed below, the Court of Appeals never compared the actual compensatory damages to the punitive damages awarded as is required by *Gore*.

The Court of Appeals' failure to comply with *Gore* and *State Farm* also illustrates the inconsistent application by different state courts of this Court's decisions on the issue of punitive damages. A comparison of the Court of Appeals' decision here with the Supreme Court of Utah's recent decision in *Campbell v. State Farm Mut. Auto. Ins. Co.*, No. 981564, 2004 WL 869188 (Utah Apr. 23, 2004), demonstrates how state courts have varied

widely in the application of *Gore* and *State Farm*. In *Campbell*, the Supreme Court of Utah noted that this Court "strongly implied" that single digit ratios mark the outer limits of due process. *Id.* at *9. Accordingly, the Court held that a 9-to-1 ratio between compensatory and punitive damages served Utah's legitimate goals of deterrence and retribution within the limits of due process and thus, reduced the punitive damages award from $145 million to $9,018,780.75. *Id.* at ** 10, 12.

The reasoning and holding of the Utah Supreme Court demonstrates that it will likely invalidate any punitive award exceeding a 9-to-1 ratio. Conversely, the Georgia Court of Appeals has signaled that a 22.7-to-1 ratio is permissible in the State of Georgia and that a comparison of the punitive damages award with the actual compensatory damages award is unnecessary. The inconsistent application of *Gore* and *State Farm* by Georgia and Utah appellate courts evidences a split among state courts which necessitates this court granting certiorari in this case.

The Court of Appeals of Georgia's decision in this case does not comply with *Gore* and *State Farm* and it is inconsistent with the application of these decisions by other courts. Thus, this petition and plenary review should be granted.

B. The Georgia Court Of Appeals' Comparison Of The Punitive Damages Award To Hypothetical Compensatory Damages, Rather Than The Plaintiff's Actual Compensatory Damages, Conflicts With *State Farm*

The court below never articulated how the 22.7-to-1 ratio of punitive damages to compensatory damages in this case comported with due process, because it never applied the second *Gore* guidepost. At no point did the

court below compare the actual compensatory damages to the punitive damages award as is required by the second *Gore* guidepost, nor did it address this Court's recognition that "few awards exceeding a single digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *State Farm*, 538 U.S. at 425.

Instead, the court below improperly justified the punitive damages award by hypothesizing that the plaintiff could have died as a result of the accident. The court then compared hypothetical damages awards in wrongful death cases to the actual punitive damages awarded to determine that there was no disparity between the two awards. *Craig v. Holsey*, 590 S.E.2d 742, 748 (Ga. Ct. App. 2003); App., infra, 10a.

Such a comparison is in direct conflict with *Gore* and its progeny because the court below never applied the second *Gore* guidepost. Furthermore, the Court of Appeals' analysis renders the second *Gore* guidepost a nullity because courts could always negate an impermissible disparity between compensatory and punitive awards by leaping to the conclusion that the plaintiff's injury and resulting compensatory damages could have been worse. If courts are allowed to compare hypothetical compensatory damages to punitive damages awards, there will never be a disparity between the two awards. Just as due process does not permit courts to adjudicate the merits of hypothetical claims under the *Gore* reprehensibility guidepost, the comparison of hypothetical compensatory damages to punitive damages under the second *Gore* guidepost also violates due process. *State Farm*, 538 U.S. at 423.

The only authority that the court below cited in support of its comparison of hypothetical compensatory damages to punitive damages is *Hosp. Auth. of Gwinnett*

County v. Jones, 409 S.E.2d 501 (Ga. 1991). In *Jones*, the Georgia Supreme Court "rejected the notion that punitive damages must necessarily bear some relationship to the *actual* damages awarded by the jury." *Jones*, 409 S.E.2d at 503. The Georgia Supreme Court justified this conclusion by reasoning that "[w]hile the Supreme Court in *Haslip* analyzed the punitive damages award by comparing it to the actual award, nothing in the opinion mandates such a comparison." *Id.*

Here, the plaintiff was not killed nor was she seriously injured as a result of the accident. Instead, she suffered back and neck strain that had substantially resolved prior to trial. As Presiding Judge Andrews recognized in his dissent, "this was not a potentially fatal accident nor [was] it a potential wrongful death case." *Craig*, 590 S.E.2d at 749; App., infra, 14a (Andrews, P.J., concurring in part and dissenting in part). Therefore, Presiding Judge Andrews correctly concluded that the Court of Appeals sought to negate the disparity between the awards with its hypothetical damages analysis and that such analysis conflicts with the *State Farm* opinion. *Craig*, 590 S.E.2d at 749; App., infra, 13a.

If the Court of Appeals' reasoning were to stand, no Georgia punitive damages award could ever violate the second *Gore* guidepost. Such a conclusion would impermissibly render the second *Gore* guidepost a nullity and allow unconstitutionally excessive punitive damages awards to be affirmed. Yet based upon the Court of Appeals' decision in this case and the Georgia Supreme Court's decision in *Jones*, the current state of the law in Georgia is that punitive damages do not have to bear any relationship to the actual compensatory damages awarded by the jury. This stands in direct conflict with this Court's decisions on punitive damages awards and its clear mandate.

Indeed, the apparent flaw in the Court of Appeals' comparison of hypothetical damages to the punitive award is confirmed by the second *Gore* guidepost, which is the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award. *Gore*, 517 U.S. at 580. In *Gore*, this Court confirmed that "[t]he principle that exemplary damages must bear a 'reasonable relationship' to compensatory damages has a long pedigree" and "both *Haslip* and *TXO* endorsed the proposition that a comparison between the compensatory award and the punitive award is significant." *Id.* at 580-581 (citing to *Haslip*, 499 U.S. at 23-24 and *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 460, 113 S.Ct. 2711 (1993)). Furthermore, due process requires a comparison of the punitive damages award to the actual compensatory damages not a comparison to hypothetical compensatory damages. *State Farm*, 538 U.S. at 423 (holding that "[d]ue process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis").

The reasoning of the court below is in direct conflict with this Court's mandate, most recently articulated in *State Farm*. Accordingly, this petition and plenary review should be granted.

C. The Georgia Court Of Appeals' Justification Of The Punitive Damages Award By Reference To Dissimilar Conduct On The Part Of The Tortfeasor Conflicts With *State Farm*

In affirming the punitive damages award, the court below relied upon evidence that Craig had smoked marijuana prior to and after the day of the accident. The court below further considered the details surrounding

Craig's arrest in 1996 and subsequent conviction for possession of a controlled substance in Arkansas. *State Farm* makes clear that such an analysis is invalid. In *State Farm*, this Court confirmed that "[a] defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages." *State Farm*, 538 U.S. at 422. Accordingly, this Court concluded that "[a] defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business." *Id.* at 423.

Yet in this case, Craig was punished for dissimilar acts when the jury considered evidence of his drug and alcohol use on occasions other than on the day of the accident and his previous conviction for possession of a controlled substance. The introduction of this evidence was then affirmed by the court below. Although the degree of reprehensibility of a defendant's conduct is the most important indicium of the reasonableness of a punitive damages award, the court below impermissibly bolstered its reprehensibility conclusion by considering evidence of dissimilar acts. It was the act of driving while under the influence, not the use of marijuana independent of operating a vehicle or Craig's conviction for possession of a controlled substance, which arguably caused the accident and injured the plaintiff. Presiding Judge Andrews, in his dissent, recognized that "this was an isolated incident" and that "Craig had no previous arrests for DUI." *Craig*, 590 S.E.2d at 749; App., infra, 13a (Andrews, P.J., concurring in part and dissenting in part). As in *State Farm*, there is scant evidence here of repeated misconduct of the sort that injured the plaintiff. *State Farm*, 538 U.S. at 423.

Accordingly, this case was impermissibly used as a platform to expose and punish Craig for his unsavory behavior unrelated to the accident in question. *Id.* at 420.

To base the punitive damages award on Craig's dissimilar acts to any degree creates the possibility that he will be punished multiple times for the same conduct. Such a result violates due process and renders the punitive damages award unconstitutional. *Id.* at 423 (citing to *Gore*, 517 U.S. at 593 (Breyer, J. concurring)).

Indeed, of the five factors pertaining to the reprehensibility of a defendant's conduct, only two were present in this case. Admittedly, Craig caused physical harm to the plaintiff and his conduct evinced an indifference to or a reckless disregard of the safety of others. But the plaintiff was not financially vulnerable, Craig's conduct was an isolated incident, and the harm was not the result of intentional malice, trickery, or deceit; instead it was a mere accident.

The Court of Appeals' holding that Craig's conduct was sufficiently reprehensible to warrant punitive damages stands in sharp contrast to the Vermont Supreme Court's recent decision in *Bolsta v. Johnson*, No. 2003-004, 2004 WL 444649 (Vt. March 4, 2004). In *Bolsta*, the defendant, who had a suspended license from a prior DUI conviction, caused a traffic accident while having a blood alcohol content of 0.156. Yet the Court held that the defendant's conduct, which it characterized as negligent or reckless, was insufficient to support a finding of actual malice as is required for the imposition of punitive damages.

Here, Craig caused an accident while driving under the influence, but unlike the defendant in *Bolsta*, he did not have a history of driving while under the influence nor was his license suspended from a prior DUI conviction. Nevertheless, the Court in *Bolsta* determined that the defendant could not be subjected to punitive damages while the Georgia Court of Appeals in this case concluded that Craig's conduct was sufficiently repre-

hensible to warrant a punitive damages award that was 22.7 times the amount of compensatory damages. Such inconsistent determinations of what conduct is sufficiently reprehensible to warrant punitive damages evidences a split among state courts necessitating a review by this Court.

CONCLUSION

As Presiding Judge Andrews explained in his dissent: "[i]n this case, of the three guideposts set out by *Gore*, the last two are not met, and only two of the five factors to be considered are present in the first one. Accordingly, the punitive damages awarded in this case were excessive and the judgment should be reversed." *Craig*, 590 S.E.2d at 749; App., infra, 14a (Andrews, P.J., concurring in part and dissenting in part). The decision of the Georgia Court of Appeals in this case directly conflicts with this Court's decisions in *Gore* and *State Farm* and the petition for a writ of certiorari should be granted.

Respectfully submitted,

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